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**CIVIL ACTION NO. 2-01CV198**

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5. Defendants admit that EnronOnline has established a web site at <http://www.enrononline.com>. Defendants deny the remaining allegations contained in Paragraph 5 of Plaintiff's Original Complaint.

6. Defendants admit that United States Patent No. 6,058,379, entitled "Real-time Network Exchange with Seller Specified Exchange Parameters and Interactive Seller Participation" issued on May 2, 2000, that James M. Odom and Scott D. Yelich are named as the inventors of that patent, and that Auction Source, L.L.C. is named as the assignee of those inventors but state they do not have sufficient information to admit or deny the remaining allegations in the first sentence in Paragraph 6 of Plaintiff's Original Complaint. Defendants admit the allegation in the second sentence in Paragraph 6 of Plaintiff's Original Complaint. Defendants do not have sufficient information to admit or deny the allegations contained in the third sentence in Paragraph 6 of Plaintiff's Original Complaint.

7. Defendants admit that Plaintiff has brought this action for patent infringement under Title 35 of the United States Code.

8. Defendants admit that this Court has subject matter jurisdiction over claims involving the patent laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Defendants do not contest the propriety of venue under 28 U.S.C. §§ 1391 and 1400(b).

10. Defendants refer to and incorporate herein their responses to Paragraphs 1-9 of Plaintiff's Original Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of Plaintiff's Original Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Original Complaint.

13. Defendants deny that Plaintiff is entitled to the relief requested in its prayer for relief.

14. Defendants deny each allegation not specifically mentioned herein.

#### **FIRST AFFIRMATIVE DEFENSE**

15. United States Patent No. 6,058,379 (the " '379 Patent") is invalid in view of the prior art pursuant to 35 U.S.C. §§ 102 and 103.

#### **SECOND AFFIRMATIVE DEFENSE**

16. The '379 Patent is invalid in view of the prior art pursuant to 35 U.S.C. §§ 102, 103, and 112.

#### **THIRD AFFIRMATIVE DEFENSE**

17. Defendants have not infringed any valid and enforceable claims of the '379 Patent. Similarly, Defendants are not currently infringing any valid and enforceable claims of the '379 Patent.

#### **FOURTH AFFIRMATIVE DEFENSE**

18. Alternatively, to the extent that any of the claims of the '379 Patent are valid, by reason of prosecution history estoppel, Plaintiff is estopped to assert for the '379 Patent a

claim construction that would cause the claims of that Patent to be infringed by any method or computer system made, used, sold, or offered by sale by Defendants.

### **EXCEPTIONAL CASE**

19. This is an exceptional case under 35 U.S.C. § 285 and, as such, Defendants are entitled to recover from Plaintiffs their attorneys' fees and costs incurred in connection with this civil action.

### **COUNTERCLAIM DECLARATORY JUDGMENT**

20. This is a counterclaim for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 arising from an actual controversy between the Plaintiff and Defendants concerning the enforceability, validity, and infringement of the '379 Patent.

21. This Court has subject matter jurisdiction to hear and decide this Counterclaim pursuant to 28 U.S.C. §§ 2201 and 2202, and 28 U.S.C. § 1338(a).

22. Venue is proper in the United States District Court for the Southern District of Texas under 28 U.S.C. §§ 1391(b) and 1400(b).

23. On May 2, 2000, the '379 Patent was issued with James Michael Odom and Scott D. Yelich as the named inventors and Auction Source, L.L.C. as the named assignee.

24. Plaintiff has asserted that Defendants have infringed and are infringing the '379 Patent by operating, making, using, offering for sale, and/or selling EnronOnline.

25. The '379 Patent is invalid and unenforceable for failure to meet the conditions of the United States patent laws, including but not limited to 35 U.S.C. §§ 102, 103, and 112.

26. The '379 Patent is invalid in view of the prior art pursuant to 35 U.S.C. §§ 102 and 103.

27. Defendants have not infringed any valid and enforceable claims of the '379 Patent. Similarly, Defendants are not currently infringing any valid and enforceable claims of the '379 Patent.

28. Defendants seek a declaratory judgment that they have not infringed and are not currently infringing the '379 Patent; that the '379 Patent is invalid and unenforceable for failure to meet the conditions of the United States patent laws, including but not limited to 35 U.S.C. §§ 102, 103, and 112; and that the '379 Patent is invalid in view of the prior art pursuant to 35 U.S.C. §§ 102 and 103.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that:

- (a.) Plaintiff's Complaint be dismissed, with prejudice, and that a take-nothing judgment be entered in favor of Defendants;
- (b.) Judgment be entered in favor of Defendants declaring that United States Patent No. 6,058,379 is invalid and unenforceable, and, in the alternative, that Defendants have not infringed and are not infringing such Patent;
- (c.) Judgment be entered in favor of Defendants and against Plaintiff that this is an exceptional case and that Defendants are entitled to recover their attorneys' fees and costs under 35 U.S.C. § 285; and
- (d.) Defendants have such other and further relief as is just and proper.

Respectfully submitted,

*Bill Sims / 9/12 by permission*

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of November 2001, a true and correct copy of the and foregoing pleading was served, by first class U.S. mail, postage prepaid, on the following:

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